

THIS INSTRUMENT PREPARED BY AND RETURN TO:

E. WOODS WEATHERSBY

EVANS PETREE PC

1000 RIDGEWAY LOOP ROAD, SUITE 200

MEMPHIS, TENNESSEE 38120

After Recording, Return To:

Baskin, McCarroll, McCaskill & Campbell, PA

PO Box 190

Southaven, MS 38671

(662) 349-0664

File No: 908090 Initials: _____

**DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "Agreement") is made and entered into this 14th day of December, 2008 by and among RTA Properties, LLC, a Mississippi limited liability company, THT, III Properties, LLC, a Mississippi limited liability company, BST Properties, LLC, a Mississippi limited liability company, RCT Properties, LLC, a Mississippi limited liability company, Bob White Land, LLC, a Mississippi limited liability company, and Bob White Farms, LLC, a Mississippi limited liability company, as tenants in common, (collectively, the "Declarant").

RECITALS

- A. Declarant is the owner of that certain real property situated in the City of Southaven, County of DeSoto, State of Mississippi, as more particularly depicted and described on **Exhibit "A"** attached hereto and incorporated herein by this reference ("**Property**").
- B. Declarant intends to simultaneously or hereafter develop or allow or cause the development of the Property as a retail/commercial site (excluding, however, the Detention Facility Tract and the Drainage Area).
- C. Declarant has deemed it desirable to create an association to which should be delegated and assigned the powers of maintaining, administering and enforcing the covenants, conditions and restrictions and collecting and disbursing the Assessments and charges hereinafter created for the efficient preservation and maintenance of the values and amenities of the Property.
- D. Declarant has caused or will cause to be incorporated under the laws of the State of Mississippi a non-profit, non-stock corporation, Snowden Retail Association of Owners, Inc., for the purpose of exercising the functions aforesaid.
- E. The Declarant desires to impose certain easements upon the Property, and to establish certain covenants, conditions and restrictions with respect to said Property, for the mutual and reciprocal benefit and complement of the Property and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Declarant hereby covenants and agree that the Property and all present and future owners and occupants of the Parcels (hereinafter defined) shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that said Property and Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

Baskin

AGREEMENTS

1. Definitions. For purposes hereof:

- (a) "ACC" shall mean the architectural control committee composed of three individuals selected by the Association (hereinafter defined).
- (b) "Access Opening(s)" shall mean those ingress, egress and access points serving the Property and related improvements, paving and curbing in the locations within the Property as depicted on **Exhibit "B"** attached hereto.
- (c) "Assessment" shall mean and collectively refer to any annual assessments, fines, fees or charges, any special assessments, any emergency assessments fixed, established, and collected from time to time by the Association as hereinafter provided.
- (d) "Association" shall refer to the Snowden Retail Association of Owners, Inc., a Mississippi not-for-profit corporation, its successors and assigns. Following the creation of Snowden Retail Association of Owners, Inc., another Mississippi not-for-profit corporation may be formed,. Upon said assignment, if any, Snowden Retail Association of Owners, Inc. shall automatically terminate and the subsequently formed association will be considered the "Association" for all intents and purposes of this Agreement. Notwithstanding the assignment and termination of Snowden Retail Association of Owners, Inc., all easements, restrictions, covenants, terms and conditions of this Agreement shall remain in full force and effect.
- (e) "Board" shall mean the board of directors of the Association.
- (f) "Common Area" shall mean the COS-21A, depicted on **Exhibit "A-Part 1"**, which includes a portion of the Driveway (hereinafter defined) as shown on **Exhibit "B"**, the Detention Facility (hereinafter defined) together with all signs, and other improvements located within COS-21A. COS-21A is also depicted upon **Exhibit "E."**
- (g) "Common Expenses" shall be all of those documented costs and expenses actually incurred or to be incurred in the performance in maintaining, replacing and repairing the Common Area or any improvement located therein.
- (h) "Detention Facility" shall mean those certain surface or subsurface storm water detention lines and facilities constructed for the purpose of the transmission, discharge, treatment, storage and accumulation of overflow surface water runoff and drainage from all of the Parcels located on the Detention Facility Tract depicted on **Exhibit "C"**.
- (i) "Detention Facility Tract" shall mean that portion of the Common Area upon which the Detention Facility is located as more particularly depicted and described on **Exhibit "C"**.

- (j) **"Driveway"** or **"Driveways"** shall mean those driveways and related driveway improvements, paving, curbing, entrances and exits, in the locations within the Property (designated 24' and 31' Ingress/Egress Easements) as depicted on **Exhibit "B"** attached hereto.
- (k) **"Improvements"** shall mean all buildings, structures, parking areas, paving, fences, screening walls and barriers, retaining walls, stairs, decks, landscaping, plantings, trees and shrubs, poles, signs, lighting, loading areas, and all other structures or alterations to a Parcel.
- (l) **"Joint Curb Cut(s)"** shall mean (i) certain curb cuts located on Goodman Road as more particularly depicted on **Exhibit "B"**, and (ii) certain curb cuts located on Getwell Road next to the southern boundary of COS-21A, as more particularly depicted on **Exhibit "B."**
- (m) **"Owner"** or **"Owners"** shall mean the Declarant and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.
- (n) **"Parcel"** or **"Parcels"** shall mean each separately identified parcel of real property now constituting a part of the Property subjected to this Agreement as described on **Exhibit "A,"** and any future subdivisions thereof.
- (o) **"Parcel A"** shall mean and refer to that certain Parcel containing 1.96 acres being more particularly described on **Exhibit "D"**.
- (p) **"Permittees"** shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).
- (q) **"Plat"** shall mean that outline plan of the Parcels attached hereto as **Exhibit "E"** and by reference made a part hereof of record in the Chancery Court Clerk's Office of Desoto County, Mississippi as Plat Book 108, Page 14.

2. Easements.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, Declarant hereby grants, establishes, covenants and agrees that the Parcels, and all Owners and Permittees of the Parcels, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Parcels and all present and future Owner's and Permittees of the Parcels:

- (a) Ingress and Egress Easement. An easement for reasonable access, ingress and egress over all paved driveways, roadways and walkways as presently or hereafter constructed and constituting a part of the Property, including, without limitation, the Driveways, Joint Curb Cuts, and Access Openings so as to provide for the passage of motor vehicles and pedestrians between the Parcels and the Driveways, Joint Curb Cuts, and Access Openings and to and from all abutting streets or rights of way.

(b) **Detention Facility and Drainage Easements.** A Detention Facility and appurtenant facilities will be constructed on all or a portion of the Detention Facility Tract. Upon substantial completion of construction of the Detention Facility and appurtenant facilities, Declarant shall be deemed to have granted and established a non-exclusive easement in, over and upon the Detention Facility Tract for the benefit of all Parcels for the purpose of transmitting, accumulating and discharging overflow surface water runoff and drainage from all Parcels within the overall project and the construction, maintenance, repair and replacement of underground stormwater drainage lines, which connect each Parcel to the Detention Facility, subject to the provisions of this Agreement. In addition, upon substantial completion of the Detention Facility and appurtenant facilities, Declarant shall convey COS-21A, the Detention Facility Tract, Detention Facility and all appurtenances thereto to the Association, in which event the Association shall be solely responsible for maintaining, repairing, replacing, regulating the use of and performing any other acts related to the areas and improvements conveyed. The costs of maintaining, repairing, replacing and regulating COS-21A and the Detention Facility and related appurtenances shall be a Common Expense and shall be included as part of the Assessments to the Parcel Owners, provided that following the conveyance of such areas and facilities to the Association, the Association shall have the right to levy and collect Assessments under this Declaration (and subject to the terms and conditions of this Declaration pertaining to the Assessments) for the costs of such activities. The Association shall also be transferred the Declarant's other obligations of maintenance, repair and replacement, including without limitation the Declarant's responsibilities for the monument sign contemplated by Section 2.1(d), and the Association shall be deemed to have been granted and given such easements as may be reasonably necessary for the Association to properly discharge and satisfy such obligations.

Each Owner shall furnish to the ACC, for its prior approval in accordance with the provisions of Section 4 below (which shall not be unreasonably withheld or delayed), all drawings, plans specifications and other documents (the "**Drainage Submittals**") which provide for the construction, maintenance, repair, replacement and use of the underground stormwater drainage lines to be located on such Owner's Parcel, and to be connected to the Detention Facility, for the transmission, accumulation and discharge of overflow surface water from its parcel to the Detention Facility (collectively, the "**Stormwater Drainage Activities**"). All drawings, plans, specifications and other documents which provide for the Stormwater Drainage Activities shall be conformed to the reasonable comments of the ACC in accordance with the provisions of Section 4 below, which shall receive a final set thereof. All work performed shall be completed in strict accordance with the Drainage Submittals and all applicable local, state and federal laws and permits.

All Stormwater Drainage Activities on the Drainage Facility Tract shall be conducted in strict accordance with the restrictions and requirements established by the Association and the ACC in accordance with Section 4 below and all applicable local, state and federal laws and permits, and all Stormwater Drainage Activities shall be conducted at such times, and in such a manner, so as to have minimal effect on the construction, use or operation of the Detention Facility and other improvements located on the Detention Facility Tract or upon any other Parcel. Any damage to or disruption of the Detention Facility, sod, trees, landscaping, irrigation systems, improvements or other portions of Detention Facility Tract or occurring in connection with the Stormwater Drainage Activities, including any damage or destruction to any other Parcel, shall be promptly repaired and restored to their prior condition at no expense to the Declarant, the Association or the affected Owner. The Owner(s) conducting the Stormwater Drainage Activities shall indemnify and save harmless Declarant, the Association, and the other Owners of any other damaged or disturbed Parcel from all claims,

damages, costs and expenses, including without limitation, reasonable attorney's fees and court costs, relating to any injury of person and/or damage to property on Detention Facility Tract or affected Parcel arising out of, or in any way associated with, the Stormwater Drainage Activities or otherwise related to the transmission, accumulation or discharge of overflow surface water from its Parcel to the Detention Facility. In the event that there shall be a lien or claim for payment filed against the Detention Facility or the Detention Facility Tract arising out of or relating to the Stormwater Drainage Activities conducted by the Owner of a Parcel, then such Parcel Owner promptly shall bond and discharge such lien or claim for payment, and shall furnish the Declarant and the Association with the notice thereof, within fourteen (14) days after receipt of notice. The Declarant, the Association or subsequent Detention Facility Tract Owner shall be responsible for the operation, use, maintenance and repair and replacement of the Detention Facility; provided, however, that the operation, use, maintenance, repair and replacement of any facilities constructed or installed on the Detention Facility Tract or another Parcel and connected to the Detention Facility by another Parcel Owner pursuant to the easements provided in this Section hereof shall be the responsibility of such Parcel Owner.

Notwithstanding anything contained herein to the contrary, no Owner shall grant any easement, right of way or other interest permitting the transmission, accumulation or drainage of overflow surface water runoff from any property located adjacent to any of the Parcels onto its individual Parcel, it being understood that the Detention Facility is intended to be used exclusively by the Parcels.

The Declarant, Association or subsequent Detention Facility Tract Owner, with prior notice to the Owners, shall be entitled to dedicate the Detention Facility Tract, the Detention Facility or any portion thereof after substantial completion to the applicable governmental entity or authority, provided that said governmental entity shall accept responsibility for the operation, maintenance and repair thereof. From and after such dedication, if such governmental entity shall accept the dedication and agree to assume the responsibility for the maintenance, repair and replacement of same, the Declarant, Association or subsequent Detention Facility Tract Owner shall be relieved from any obligation thereafter to operate, use, maintain, repair or replace the Detention Facility, or to perform any other obligation with respect thereto, as provided in this Declaration; provided, nothing contained herein shall in any way reduce the rights of Owners to use and enjoy the Drainage Facility and the easements granted in association therewith, as hereinabove provided.

An easement within underground lines and facilities through those parts of the Parcels not within areas in which it is contemplated that construction of buildings or other above-grade improvements will occur, for the discharge, drainage, use, detention and retention of storm water runoff in the manner, which easement shall include the right to install, maintain, repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus related thereto underground ("**Water Detention and Drainage Facilities**") within those portions of the Parcels. The easement granted herein shall include the right of reasonable ingress and egress with respect to the Water Detention and Drainage Facilities as may be required to maintain and operate the same. Once constructed (i) the Water Detention and Drainage Facilities shall not be modified, altered, relocated or otherwise changed, without the prior written consent of all Owners; and, (ii) each Owner shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Water Detention and Drainage Facilities serving its Parcel and make any and all repairs and replacements that may from time to time be required with respect thereto.

(c) **Utility Easements.** An easement under and across those parts of the Parcels not within areas in which it is contemplated that construction of buildings or other above-grade improvements will occur, for the installation, maintenance, repair and replacement of water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the orderly development and operation of the Parcels and each building and other improvement from time to time located within the Parcels; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Parcel and the businesses conducted therein, (ii) the exact location of any utilities shall be subject to the requirements of applicable law and permits and the approval of the Owner(s) of the burdened Parcel(s), and (iii) except in an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the Parcel (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Parcel.

(d) **Monument Sign Easement.** Subject to the requirements and restrictions of applicable laws, an easement upon the Detention Facility Tract in the areas approximately shown and/or legally described on the attached **Exhibit "C"**, for the construction, reconstruction, replacement, operation, maintenance and repair of a monument sign of approximately nine feet (9') in width and twenty-five feet (25') in height, which shall benefit the development and which shall only identify the development within the Property as a whole, (such sign herein referred to as the "**Detention Facility Tract Sign**"). The easement granted herein shall be over, under, upon and across that portion of the Detention Facility Tract depicted on the attached **Exhibit "C"**, and shall further include the right of reasonable access over, under, upon and across the Detention Facility Tract to install, replace, maintain, repair and operate the Detention Facility Tract Sign and a utility line, pursuant to the terms and conditions set forth in paragraph (c) above, in order to provide such Detention Facility Tract Sign a with power to illuminate the same. Once constructed and transferred by Declarant, the Association shall thereafter maintain, operate, illuminate and repair such Detention Facility Tract Sign and utility line. The Detention Facility Tract Sign shall be exclusively used by the Association to identify the overall development within the Property, as the Association shall determine, and shall not be used to identify individual Owners or Permittees of Owners.

(e) Subject to the rights to review and approve the location of signs, as set forth below, an easement within the Property for the construction, reconstruction, replacement, operation, maintenance and repair of directional or similar signs, as may be permitted by applicable laws. The easement granted herein shall be over, under, upon and across those areas, if any, which are previously approved in writing by the owner of the parcel within which the sign(s) is/are to be located, and shall further include the right of reasonable access over, under, upon and across such areas to install, replace, maintain, repair and operate said directional signs. Once constructed, the Association shall thereafter maintain, operate, illuminate and repair said directional signs. Any other directional sign installed within the Parcels for the benefit of the business(es) operating therein shall be maintained by the Owner of the Parcel in which such signs are situated. Notwithstanding the forgoing, no sign contemplated by this easement shall be located within any parking area, drive aisle or in any location that would materially impede the visibility of any other sign or building.

2.2 Indemnification. Each Owner having rights with respect to an easement granted hereunder shall indemnify and hold the Owner whose Parcel is subject to the easement harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

2.3 Access Openings. The opening(s) and access point(s) contemplated between the Parcels for use of the Driveways and between the Parcels for use of the Joint Curb Cuts for access to adjoining Parcels or to Goodman Road or to Getwell Road, are shown on **Exhibit "B"** and such opening(s) and access point(s) between the Parcels for use of the Driveways and Joint Curb Cuts, as contemplated pursuant to paragraph 2.1(a) above, are hereinafter called the "**Access Openings**." The Access Openings shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on **Exhibit "B"**. There shall be maintained between the Access Openings a smooth and level grade transition to allow the use of the Driveways and of the Joint Curb Cuts for pedestrian and vehicular ingress and egress as set forth in paragraph 2.1(a) above. Except with respect to the Access Openings, each Owner shall be permitted to maintain a fence, curbing, landscaping or other improvements along the boundary line of its Parcel.

2.4 Reasonable Use of Easements.

(a) The easements herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

(b) Once the Water Detention and Drainage Facilities are installed pursuant to the easements granted in paragraph 2.1(b) hereof, and/or utility lines, systems and equipment are installed pursuant to the easements granted in paragraph 2.1(c) hereof, no permanent building, structures, trees or other improvements inconsistent with the use and enjoyment of such easements shall be placed over or permitted to encroach upon such water detention, drainage and utility installations. The Owner of the Parcel served by such installations shall not unreasonably withhold its consent to the reasonable relocation of such installations requested by the Owner of a Parcel where such installations are located, at such requesting Owner's sole cost and expense, so long as water detention and drainage services or utility services, as applicable, to the other Owner's Parcel are not unreasonably interrupted and the remaining provisions of this paragraph are complied with.

(c) Once commenced, any construction undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Parcel of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Parcel if the same interferes with utility or drainage easements or easements of ingress, egress or access to or in favor of another Owner's Parcel, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Owner and its Permittees. In such case, no affirmative monetary obligation shall be imposed upon the other Owner and the Owner undertaking such work shall with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed

prior to the commencement of such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the other Owner(s) and its Permittees from all damages, losses, liens or claims attributable to the performance of such work.

3. Maintenance.

3.1 General. Until such time as Improvements are constructed on a Parcel, the Owner thereof shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.

3.2 Buildings and Appurtenances Thereto. Each Owner covenants to keep and maintain, at its sole cost and expense, the building(s) and other Improvements located from time to time on its respective Parcel in good order, condition and repair consistent with other first class retail/shopping center developments in DeSoto County, Mississippi. Once constructed, in the event of any damage to or destruction of a building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building Improvements to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement), or (b) demolish and remove all portions of such damaged or destroyed building Improvement then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition. All Improvements shall be one (1) story in height, and shall not exceed a maximum height of thirty-five feet (35') from grade level. The building area on any Parcel shall be limited to not more than a total of twenty thousand (20,000) square feet of first floor building area. Each Parcel shall comply with applicable governmental parking ratio requirements without taking into account the parking provided on the other Owner's Parcel, such that each Parcel shall be self sufficient for vehicular parking.

3.3 Driveways, Joint Curb Cuts, and Access Openings. Each Owner covenants at all times during the term hereof to operate and maintain or cause to be operated and maintained, at its sole cost and expense, its Parcel, including, without limitation, all Driveways, Joint Curb Cuts, and Access Openings which may be located therein, in good order, condition and repair. Maintenance shall include, without limitation, maintaining and repairing all sidewalks and the surface of the parking and roadway areas, removing all papers, debris and other refuse from and periodically sweeping all parking and road areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the parking areas and roadways, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping, maintaining signage in good condition and repair, and performing any and all such other duties as are necessary to maintain each Owner's Parcel in a clean, safe and orderly condition. Except as otherwise expressly provided in this Agreement, once constructed, in the event of any damage to or destruction of all or a portion of the Driveways, Joint Curb Cuts or Access Openings on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence repair, restore and rebuild such to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement). Each Owner reserves the right to alter, modify, reconfigure, relocate the building(s) within the building areas on its Parcel, subject to the following conditions: (i) the reciprocal easements between the Parcels pursuant to paragraph 2.1(a) shall not be closed or materially impaired; (ii) the Driveways and ingress and egress thereto, and to and from the Parcels and adjacent streets and roads, shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of all Owners; and (iii) the same shall not violate any of the provisions and easements granted in paragraph 2.

3.4 Common Area. The Association covenants at all times during the term hereof to operate and maintain or cause to be operated and maintained as a Common Expense all Common Area in good order, condition and repair. Following the construction of improvements thereon, maintenance of Common Area shall include, without limitation, maintaining all Driveways, roadway areas, landscaping, and signage within the Common Area in good condition and repair, and performing any and all such other duties as are necessary to maintain the Common Area and the improvements therein in a clean, safe and orderly condition. Except as otherwise expressly provided in this Agreement, once constructed, in the event of any damage to or destruction of all or a portion of the Common Area, the Association shall, and with due diligence repair, restore and rebuild such Common Area to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement), the costs of which shall be charged as a Common Expense and collected through a Special Assessment described below. Declarant and/or the Association reserves the right to alter, modify, reconfigure, relocate and/or remove the Common Areas, subject to the following conditions: (i) the Driveways, Joint Curb Cuts, Access Openings and reciprocal easements between the Parcels pursuant to paragraph 2.1(a) shall not be closed or materially impaired; and (ii) the same shall not violate any of the provisions and easements granted in paragraph 2.

(a) Annual Assessments for Common Expenses. It shall be an affirmative and perpetual obligation of Association, through its Board, to fix Assessments in an amount at least sufficient to maintain and operate the Common Areas and the improvements therein as contemplated by this Agreement, and the Board shall fairly and honestly calculate and levy such Assessments with respect to the Parcels. The amount of monies for Common Expenses of the Association and the manner of expenditure thereof shall be a matter for the sole discretion of the Association, reasonably exercised, provided that Association shall not in any event be entitled to recover from the Owners of the Parcels any sum in excess of the total costs actually incurred and expended for such Common Areas. The Owners shall not be responsible for any expense incurred by the Association except as hereby contemplated and, without limitation, the Owners shall not be required to contribute to the payment or reimbursement of expenses not related to the subject Property. Every Owner shall be deemed to covenant and agree to pay to the Association such Assessments. Assessments shall be allocated among the Owners as follows:

(1) Proportionate Share of Common Expenses. Each Parcel shall be assessed annually a proportionate share of the Common Expenses as provided herein in a proportionate share equal to a fraction, the numerator of which is total area of such Parcel, and the denominator of which is the total area of all the Parcels together, excluding COS 21-A, public rights-of-way and conservation areas (a "**Proportionate Share**"). The Owner of a Parcel at the time of that Parcel's Assessment is directly liable to the Association for such Parcel's Assessment, and such Owner shall maintain such liability for Assessments for Common Expenses through the date on which it maintains ownership of a Parcel, notwithstanding its subsequent transfer of its interest in such Parcel.

(2) Payment of Proportionate Share. Each Owner shall cause to be paid monthly, quarterly or annually to the Association (as determined by the Board), commencing as of the date on which the business planned to operate within the Improvements within each Parcel opens for business to the public (and such payments shall continue notwithstanding any subsequent closure of such business), a sum equal to the Parcel's Proportionate Share of the Common Expenses, as estimated by the Board. The Board shall determine the amount of the projected schedule of annual Assessments due from each Owner for the following calendar year on and deliver written notice of each Owner's Proportionate Share of the Common Expenses within a reasonable time;

provided, the Board may make adjustments to the projected annual Assessment schedule, should circumstances so require, by providing each Owner written notice of an adjustment at least thirty (30) days prior to the date upon which the next annual Assessment installment is due. Written notice of the projected annual Assessment schedule shall be sent to every Owner subject thereto. The due dates for each payment for the next calendar year shall be established by the Board. The Association shall, no less than five (5) business days following a written request from an Owner, for a reasonable charge not to exceed One Hundred and No/100ths dollars (\$100.00), furnish a certificate setting forth whether the Assessments applicable to a specified Parcel have been paid.

(3) Each Owner shall have the right to review the records of the Association pertaining to the Common Expenses and the Assessments and to audit such records at the offices of the Association no more than once for each year. In the event that any such audit reveals any error in the calculation, apportionment or billing of such Common Expenses in favor of the Owner undertaking such audit, such Assessments shall immediately be adjusted as necessary to correct such error and the Association shall reimburse the Owner undertaking such audit the actual, reasonable cost incurred for such audit.

(b) Special Assessments. In addition to the foregoing, the Association may levy in any calendar year a special Assessment or Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is specifically responsible or for such other purposes as the Board may deem reasonably necessary. A meeting of the Owners shall be duly called for this purpose prior to the Association's issuance of any special assessment, written notice of which shall be sent to all Owners at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose, date and time of the meeting.

(c) Nonpayment of Assessments. Any Assessment, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Parcel against which such Assessment is levied and shall bind the Owner, his heirs, devisees, personal representatives, successors and assigns; provided, however, that no delinquency shall be adjudged upon and no late fees, fines or other penalty shall be assessed against any Parcel for failure to timely pay any Assessment hereunder until the Association shall have given the Owner written notice of its failure to timely pay such Assessment and five (5) business days to cure any unpaid balance appearing in the notice. The personal obligation of the Owner to pay such Assessment shall, however, remain personal obligations for the statutory period, and a suit to recover a money judgment for non-payment of any Assessment levied, or any installment thereof may be maintained without foreclosing or waiving the lien herein created to secure the same.

Any Assessment levied or any installment thereof which is not paid within ten (10) days after it is due may, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of Mississippi, and may subject the Owner obligated to pay the same along with such "late charge" as the Board may fix. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the Parcel subject to prior deeds of trust upon such Parcel; in either of which event the Association may collect from said Owner interest, costs and reasonable attorneys' fees. No Owner may waive or

otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of a Parcel.

To evidence the lien of any unpaid and delinquent Assessments, the Board may prepare a written notice setting forth the amount of such unpaid indebtedness, the description of the Parcel and the name of the Owner if known. Such a notice shall be signed by an officer of the Association or a member of the Board and may be recorded in the Chancery Court Clerk's Office of Desoto County, Mississippi.

For the purpose of enforcing the lien of any unpaid and delinquent Assessment, in accordance with this sub-paragraph, the Owner of each Parcel irrevocably grants the Association and its Board the power to sell the entire Parcel or a portion thereof at public outcry to the highest bidder for cash. The Association is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded deed of trust or lease upon the Parcel, or any portion thereof. The Association is hereby authorized to take any and all action available for collection of the Assessment which the laws of the State of Mississippi allow. Any such sale shall be made after first advertising the sale of the property, giving notice of the time and place of such sale of the Parcel, and adhering to any other requirement of Mississippi law. Any sale of any Parcel to enforce a lien for unpaid and delinquent Assessments shall be free from the equity of redemption, statutory right of redemption, homestead, dower and all other exemptions, all of which are expressly waived by the Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Parcel, except real estate and ad valorem taxes assessed against the Parcel and prior recorded leases and deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of the expenses of protecting the property and the expenses of litigation, attorney's fees, and sales commissions; and second, to the payment of real estate and ad valorem taxes assessed against the property; and third, to the payment of all amounts due the Association under the terms hereof; and the balance, if any, to the Owner whose property is sold, or his assigns.

All rights, remedies and privileges granted to the Association, pursuant to any terms, provisions and covenants or conditions of this Agreement, shall be deemed to be cumulative, and the exercise of any one or more shall not preclude the Association from exercising such other and additional rights, remedies or privileges as may be granted to the Association by the Declaration or at law or in equity.

The Association may require the Owner which is delinquent on any Assessment levied pursuant to this Agreement or is in default for the performance of any other obligation hereunder for a period in excess of sixty (60) days, to notify the holder of any and all deed(s) of trust on the Parcel owned by such Owner, or a part thereof, of any delinquency or default.

Upon the default in the payment of any one or more installments of any annual Assessment levied pursuant to this Agreement and the failure of any Owner to make a required remittance following written notice from the Board and the lapse of the applicable grace/cure period, the entire balance for the year may be accelerated at the option of the Board and be declared due and payable in full.

The lien established by this Section shall have preference over any other assessment, liens, judgments or charges of whatever nature, except as limited herein.

Notwithstanding any other provisions herein to the contrary, the lien of any Assessment levied pursuant to this Agreement upon any Parcel shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded deed of trust or lease upon any portion of such Parcel made in good faith and for value received, provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to the sale or transfer of such Parcel pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser at such sale from liability for any Assessments thereafter becoming due, nor from the lien of such subsequent Assessment, which said lien, if any, shall have the same effect and be enforced in the same manner as provided herein.

3.5 Utilities. Each Owner shall at all times during the term hereof construct, operate and maintain or cause to be constructed, operated and maintained, in good order, condition and repair, at its sole expense, any utility or other installations serving the Parcel of such Owner and from time to time existing on the Parcel of another Owner pursuant to an easement described herein.

3.6 Driveways. Each Owner and the Association (with respect to portions of the Driveways in the Common Area) shall at all times during the term hereof maintain in good order, condition and repair, at its sole cost and expense, any and all portions of the Driveways located on or in said Owner's Parcel or within the Common Area (as to the Association). If the Driveways are located partly within one Owner's Parcel or the Common Area, as applicable, and partly within another Owner's Parcel, or the Common Area, as applicable, the Association shall perform any necessary maintenance to the Driveways located within the Common Area and the other parcel and the Association shall bill the other Owner for its proportionate share of the costs and expenses associated with the maintenance performed. The other Owner shall pay its proportionate share within thirty (30) days of receipt of a bill therefor. If the bill is not paid in a timely manner, the Association shall have the same lien rights and other rights as granted to the Association with regard to Common Expenses, discussed in more detail in Section 3.4 above.

4. Construction of Improvements. No Improvement, or change to any existing Improvement of any type shall be made on any portion of any Parcel until the exterior plans, specifications and location for proposed Improvements have been approved in writing by the ACC, said approval not to be unreasonably withheld, conditioned or delayed. Said plans and specifications shall include the use, layout, signage (both temporary and permanent), type of construction, terrain, and drainage handling systems, parking lots, drives, fencing, landscaping, siltation control, exterior lighting, and the actual external aspects and design of any building or improvement to be erected upon or be brought to a Parcel. The ACC reserves the right to require the submission of designs, material selections and layouts of proposed Improvements or changes at different stages of the design process, and further reserves the right to specify the information required therein as well as the format thereof. Such plans, specifications and design shall be in such form and shall contain such information as may be required by the ACC, but, in any event, shall include the documents described below. The ACC shall not, in any event, unreasonably withhold, condition or delay its approval of any matter that is subject to the ACC's approval in accordance with this Declaration, and ACC shall not issue any requirement or impose any restriction that would have the effect of imposing a requirement that violates applicable law or the requirements of any applicable permits. In connection with its consideration of all matters contemplated by this Section 4, the ACC shall exercise good faith.

Before such plans, specifications and designs shall be submitted for approval, same must be prepared by an architect currently approved by the ACC, and in the case of site improvements, by a professional landscape architect currently approved by the ACC, which approval will not be unreasonably withheld, conditioned or delayed. Additionally, said submittal shall include an

architectural review fee set from time to time by the ACC to cover the costs of review and inspection. Because of the complexity of the architecture and landscape standards, only architectural and landscape architectural firms approved by the ACC may be used for landscape design. A list of approved firms may be obtained by requesting the same from the ACC. All landscape plans submitted to the ACC shall be prepared by those firms so approved unless a firm is otherwise approved by the ACC.

No construction on any Parcel shall commence until the general contractor has been approved by the ACC, which approval ACC shall not unreasonably withhold, condition or delay. Due to the necessity of strict compliance with the provisions hereof as to the design and construction of Improvements, all general contractors and builders must be licensed by the State of Mississippi and meet the reasonable standards of the ACC uniformly applied. Further, the ACC reserves the right to uniformly adopt, maintain, and administer reasonable construction standards for Improvements, as may be amended from time to time, pertaining to all aspects of construction, and including but not being limited to: (i) construction debris and trash containment and removal, (ii) protection of infrastructure and landscaping, (iii) construction times, (iv) construction audio equipment and noise, (v) materials delivery and disposal, (vi) surveys and construction staking, (vii) dump sites, (viii) Port-a-Johns, and (ix) protection of adjacent property. Within ten (10) business days following notice to ACC from the Owner of Parcel A of the general contractor desired to be used by such Owner for the construction of Improvements within Parcel A, ACC shall provide such Owner ACC's written approval or specific written objections to such general contractor, failing which ACC shall be deemed to have approved such general contractor.

If any Improvement or change requiring approval shall be undertaken on any Parcel, and said approval has not been obtained in writing from the ACC, or if any Improvement or change which is not in conformance with approved plans and specifications shall be undertaken on a Parcel, said Improvement or change shall be deemed to have been undertaken in violation of these covenants; and, upon written notice of the ACC, any such Improvement or change deemed to be in violation of the terms hereof shall be removed or altered so as to extinguish such violation. If the Owner of the Parcel in question shall not have taken reasonable steps toward the removal or alteration of the same within thirty (30) days after delivery of written notice of the violation to the Owner of the Parcel, the Association and/or the ACC shall have the right to assess a fine to the Owner and enter said Parcel and to take any reasonable steps available in law or equity necessary to extinguish such violation, including without limitation, asserting a lien on the Parcel in question, by the recording of such with the Chancery Court Clerk's Office of Desoto County, Mississippi. Any lien so recorded shall be and remain subordinate to the lien of any existing deed of trust. The Association and/or ACC may, at reasonable times, and at its sole risk and liability, enter upon and inspect any Parcel and Improvements thereon for the purposes of ascertaining whether the construction or alteration of Improvements thereon are in compliance with the provisions of these restrictions, and no such persons shall be deemed to have committed a trespass or other wrongful act by such entry or inspection. For the purpose of ensuring the overall project as an area of high standards, and to ensure reasonable compatibility of architectural designs, ACC shall have the power to make such exceptions to these covenants, and to waive particular violations, as ACC shall reasonably deem necessary, appropriate, or proper.

The Owner, or his authorized agent, shall submit to the ACC a minimum of three (3) sets of the documents the following (the "**Submittals**"):

- (a) A complete site plan, showing the nature, color scheme, kind, shape, height, materials and location with respect to said Parcel (including proposed front, rear and side setbacks) of all structures, fences, or barriers, and location of all parking spaces and driveways on the Parcel.

- (b) Complete grading, drainage, irrigation and landscape plans and specifications indicating plant species, locations, quantities, area sizes, and including the irrigation plans and specifications. All areas of the Parcel visible from the street shall be irrigated with an automatic irrigation system.
- (c) Samples of all exterior materials including the color and texture to be used in all Improvements will be submitted.
- (d) Plans and specifications relating to all exterior signage, including samples of all materials to be used therein.
- (e) Engineering plans and specifications relating to all Improvements, including electrical, mechanical and civil.
- (f) Credentials and licenses of all builders and general contractors to be engaged in the construction work on the Lot subject to the review.

In the interest of expediting the approval process, the Owner is encouraged to consult with the ACC during the early stages of the planning process at appropriate periodic intervals prior to submission. It is understood by all parties that any informal, verbal exchange between the parties is non-binding and subject to change at the sole option of the ACC. Multiple submittals may be required by the ACC. The Owners may submit the components of such Submittals separately as and when the Owners desire for such components to be reviewed by the ACC, provided that in the event that any Owner shall separate such Submittals, the ACC shall be deemed to have reserved its approval of or objections to any matters not submitted to the ACC (for example, Owners shall not be required to submit builder or general contractor information with submittals of plans).

The Submittals shall be submitted to the ACC at least thirty (30) days prior to their submittal to the relevant governmental authority for a building permit. The ACC shall issue all approvals, consents, disapprovals and objections to Submittals in writing delivered to the Owner issuing such Submittals.

The ACC shall be allowed thirty (30) days from receipt of plans and specifications to disapprove or approve the plans and specifications, in ACC's reasonable, uniformly applied discretion, provided that such period shall be reduced to ten (10) days for any resubmittal made by an Owner in response to a disapproval or objection previously received from the ACC. If the ACC does not disapprove the proposed Improvements within thirty (30) days from receipt of the required documents, such Improvements shall be conclusively deemed to be approved, and the ACC shall, on the request of the applicable Owner, issue a written statement to such Owner that such matters have been deemed approved in accordance with this Section 4.

The ACC's intent in review is to uphold the requirements, both written and implied, of planning and design review requirements as determined by the ACC from time to time.

Approval by the ACC shall be separate from all review and approval procedures by the City of Southaven, Desoto County or any other applicable governmental entity. Any material changes made to the final construction drawings and specifications must be resubmitted and re-approved by the ACC.

Every building Improvement, now or in the future constructed on the Parcels shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements.

5. Restrictions.

5.1 General. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal. In addition to the foregoing, throughout the term of this Agreement, it is expressly agreed that neither all nor any portion of a Parcel shall be used, directly or indirectly, for purposes of a disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, a theater of any kind, children's play or party facility, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, second hand store, flea market, blood bank, massage parlor, funeral home, the outdoor housing or raising of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use (including, without limitation, any manufacturing, smelting, rendering, brewing, refining, chemical manufacturing or processing, or other manufacturing uses), any mining or mineral exploration or development except by non-surface means, a car wash, a carnival, amusement park or circus, an assembly hall, off track betting establishment, bingo hall, any use involving the use, storage, disposal or handling of hazardous materials or underground storage tanks, any use which may require water and sewer services in excess of the capacities allocated to the leased premises by any governmental authority, a church, temple, synagogue, mosque, or the like, any facility for the sale of paraphernalia for use with illicit drugs, office use (except incidental to a retail use), or any use which creates a nuisance.

5.2 Prescription Pharmacy Restriction. For the benefit of the Owner of Parcel A and CVS Caremark Corporation, any parent, subsidiary, or affiliate of CVS Caremark Corporation, and any person, firm, or entity controlling, controlled by, or under direct or indirect common control with CVS Caremark Corporation, and their respective successors, assigns, tenants, subtenants, and successors-in-title, including any successor by merger or otherwise (any and all such parties and their respective successors, successors in title and assigns are hereinafter referred to individually as a "**CVS Beneficiary Party**", and collectively as "**CVS Beneficiary Parties**"), the Declarant hereby declares that no portion of 7.28 acre portion of the Property other than Parcel A shall be owned, leased, occupied, or otherwise used, directly or indirectly, for the operation of a drug store or pharmacy by any person, firm, or entity other than a CVS Beneficiary Party. Without limiting the foregoing, except as specifically set forth below, the dispensing, distribution, or furnishing of prescription drugs for a fee or profit shall be prohibited. The restriction set forth in such instrument and the terms, conditions, covenants, and burdens set forth therein (the "**CVS Restriction**") shall run with, bind, and encumber the entire Property and inure to the benefit of the Property and the CVS Beneficiary Parties for a period of thirty (30) years from and after the date that this instrument is recorded, after which time the CVS Restriction shall be automatically renewed and extended for successive periods of ten (10) years each unless, at least six (6) months before the expiration of the thirty (30) year period or each such ten (10) year extension, as the case may be, there is recorded in the Public Records of DeSoto County, Mississippi, an instrument agreeing to terminate the CVS Restriction, which instrument is signed by the then current Owner(s) of the Property (and, if the Property is not then owned by a CVS Beneficiary Party, by CVS Caremark Corporation), upon which event the CVS Restriction shall expire upon the earlier of: (i) the expiration of the then-current thirty (30) year term, (ii) the ten (10) year extension during which such instrument is recorded, as the case may be, or (iii) such date that Parcel A is not being used as a pharmacy or drug store.

6. Insurance. Throughout the term of this Agreement, each Owner shall procure and require to be maintained general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in

paragraph 2.2 above), death, or property damage occurring upon such Owner's Parcel, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage.

7. **Taxes and Assessments.** Each Owner shall timely pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency or by the Association with respect to its Parcel.
8. **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Property. No easements, except those expressly set forth herein, shall be implied by this Agreement; in that regard, and without limiting the foregoing, no easements for parking are granted or implied.
9. **Remedies and Enforcement.**

9.1 **All Legal and Equitable Remedies Available.** In the event of a breach or threatened breach by any Owner or its permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

9.2 **Self-Help.** In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Agreement within thirty (30) days following written notice thereof by the Association (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), the Association shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank One (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on a Parcel, the Association or an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

9.3 **Lien Rights.** Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to the Association or any Owner in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "**Assessment Lien**") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Chancery Clerk's Office of DeSoto County, Mississippi; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Chancery Clerk's Office of DeSoto County, Mississippi prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

9.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

9.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

9.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Agreement, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Agreement, the nondefaulting Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 and/or 5 of this Agreement.

10. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Chancery Clerk's Office of DeSoto County, Mississippi and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners in accordance with paragraph 11.2 hereof.

11. Miscellaneous.

11.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 Amendment. The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel A and Parcel B evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Chancery Clerk's Office of DeSoto County, Mississippi.

11.3 Consents. Wherever in this Agreement the consent or approval of an Owner, the Association or the ACC is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner, the Association or the ACC under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

11.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

11.5 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

11.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

11.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent Owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

11.8 Severability. Each provision of this Agreement and the application thereof to the Parcels are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

11.9 Time of Essence. Time is of the essence of this Agreement.

11.10 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

11.11 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice address of the Declarant is as follows:

Declarant : Bob White Farms, LLC
 Attention: Bayard Snowden
 1255 Lynnfield, Suite 295
 Memphis, Tennessee 38119
 Telephone: (901) 375-4800
 Facsimile: (901) 375-9600

RTA Properties, LLC
THT, III Properties, LLC
BST Properties, LLC
RCT Properties, LLC
Attention: Matthew Buyer
850 Ridgelake Boulevard, Suite 101
Memphis, Tennessee 38120
Telephone: (901) 415-6401
Facsimile: (901) 415-6438

Bob White Land, LLC
Attention: Catherine Trahan
130 Atherton Oaks Drive
Novato, California 94945
Telephone: (415) 729-1045
Facsimile: (415) 892-3225

With a copy to: E. Woods Weathersby
EVANS & PETREE PC
1000 Ridgeway Loop Road, Suite 200
Memphis, Tennessee 38120
Telephone: (901) 525-6781
Facsimile: (901) 525-9458

The notice address for the Association is as follows:

Goodman-Getwell Association of Owners, Inc.
1255 Lynnside Rd #295
Memphis, TN 38119

11.12 Governing Law. The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Agreement.

11.13 Estoppel Certificates. Each Owner and the Association, within twenty (20) day of its receipt of a written request from the other Owner(s), shall from time to time provide the requesting Owner, a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

11.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

THE DECLARANT :

RTA Properties, LLC

By: Matthew G. Buyer
 Matthew G. Buyer, Chief Manager
 December 19th, 2008

THT, III Properties, LLC

By: Matthew G. Buyer
 Matthew G. Buyer, Chief Manager
 December 19th, 2008

BST Properties, LLC

By: Matthew G. Buyer
 Matthew G. Buyer, Chief Manager
 December 19th, 2008

RCT Properties, LLC

By: Matthew G. Buyer
 Matthew G. Buyer, Chief Manager
 December 19th, 2008

Bob White Land, LLC

By: Catherine S. Trahan
 Catherine S. Trahan, Manager
 December 19th, 2008

Bob White Farms, LLC

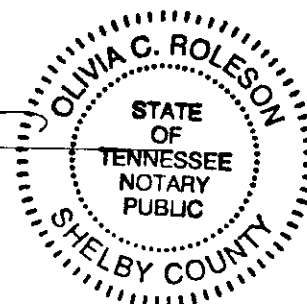
By: Maya S. Trahan
 Title: Manager
 Date: December 19, 2008

STATE OF TENNESSEE
COUNTY OF SHELBY

I Olivia C. Roleson, a Notary Public of the state and county aforesaid, DO HEREBY CERTIFY that Matthew G. Buyer, as Chief Manager of **RTA Properties, LLC**, a Mississippi limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized party appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act as such authorized party and as the free and voluntary act of said company for the uses and purposes therein set forth..

Given under my hand and notarial seal, this 14th day of December, 2008.

Notary Public



My Commission expires:

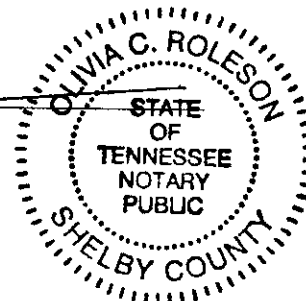
My Commission Expires
November 20, 2011

STATE OF TENNESSEE
COUNTY OF SHELBY

I Olivia C. Roleson, a Notary Public of the state and county aforesaid, DO HEREBY CERTIFY that Bayard Snowden, as Manager of **Bob White Farms, LLC**, a Mississippi limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized party appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act as such authorized party and as the free and voluntary act of said company for the uses and purposes therein set forth..

Given under my hand and notarial seal, this 11th day of December, 2008.

Notary Public

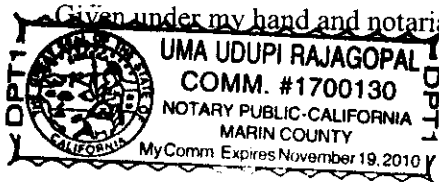


My Commission expires:

My Commission Expires
November 20, 2011

STATE OF California
COUNTY OF Marin

I Uma Udupi Rajagopal Notary Public of the state and county aforesaid, DO HEREBY CERTIFY that Catherine S. Trahan, as Manager of Bob White Land, LLC, a Mississippi limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized party appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act as such authorized party and as the free and voluntary act of said company for the uses and purposes therein set forth..



Uma Rajagopal
Notary Public

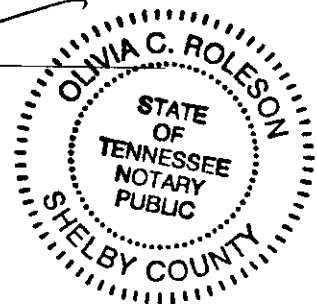
My Commission expires:
Nov 19, 2010

STATE OF TENNESSEE
COUNTY OF SHELBY

I Olivia C. Roleson, a Notary Public of the state and county aforesaid, DO HEREBY CERTIFY that Matthew G. Buyer, as Chief Manager of **THT, III Properties, LLC**, a Mississippi limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized party appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act as such authorized party and as the free and voluntary act of said company for the uses and purposes therein set forth..

Given under my hand and notarial seal, this 11th day of December, 2008.

[Signature]
Notary Public



My Commission expires:

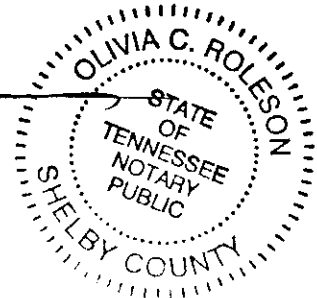
My Commission Expires
November 20, 2011

STATE OF TENNESSEE
COUNTY OF SHELBY

I, Olivia C. Roleson, a Notary Public of the state and county aforesaid, DO HEREBY CERTIFY that Matthew G. Buyer, as Chief Manager of **BST Properties, LLC**, a Mississippi limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized party appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act as such authorized party and as the free and voluntary act of said company for the uses and purposes therein set forth..

Given under my hand and notarial seal, this 11th day of December, 2008.

Notary Public



My Commission expires:

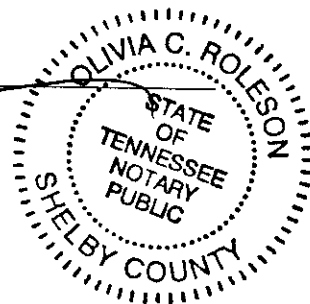
My Commission Expires
November 20, 2011

STATE OF TENNESSEE
COUNTY OF SHELBY

I, Olivia C. Roleson, a Notary Public of the state and county aforesaid, DO HEREBY CERTIFY that Matthew G. Buyer, as Chief Manager of **RCT Properties, LLC**, a Mississippi limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized party appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument as his/her free and voluntary act as such authorized party and as the free and voluntary act of said company for the uses and purposes therein set forth..

Given under my hand and notarial seal, this 11th day of December, 2008.

Notary Public



My Commission expires:

My Commission Expires
November 20, 2011

Exhibit List:

- Exhibit "A" - Depiction and Legal Descriptions of the Property
- Exhibit "B" - Depiction of Driveways, Joint Curb Cuts and Access Openings
- Exhibit "C" - Depiction and Legal Description for Detention Facility Tract and Detention Facility Tract Sign
- Exhibit "D" - Legal Description of Parcel A
- Exhibit "E" - Plat

Exhibit "A" - Part 1

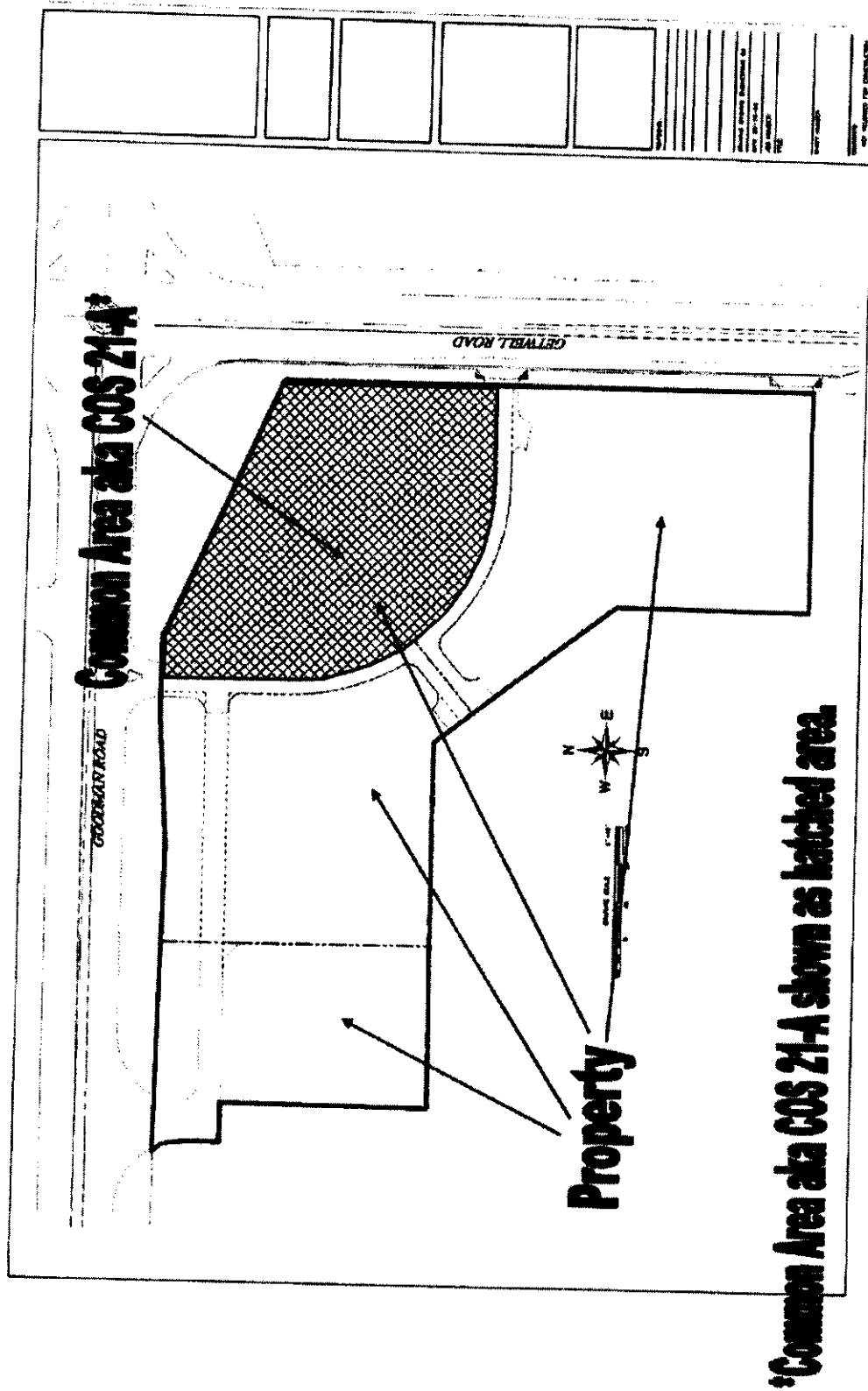


Exhibit "A" - Part 2

Property description of Snowden Farms Commercial PUD and being part of the Bob White Land, LLC, Bob White Farm, LLC, RTA Properties, LLC, THT, III, Properties, LLC, BST Properties, LLC and RCT Properties, LLC Property as described in Book 569, PAGE 754 (PARCEL V), said property being in the Northeast Quarter of Section 33, Township 1 South, Range 7 West, in the City of Southaven, DeSoto County, Mississippi and being more particularly described as follows:-

"Overall Tract or Parcel 3"

Commencing at the recognized and accepted Northeast corner of Section 33, Township 1 South, Range 7 West, in the City of Southaven, Desoto County, Mississippi said point being the intersection of the centerlines of Goodman Road (Mississippi Highway 302) and Getwell Road; thence South 00 Degrees 07 Minutes 40 Seconds East with the centerline of Getwell Road a distance of 195.00 feet to a point; thence South 89 Degrees 52 Minutes 20 Seconds West a distance of 60.00 feet to a point in the west line of Getwell Road, said point being the true point of beginning; thence South 00 Degrees 07 Minutes 40 Seconds East with the west line of Getwell Road a distance of 561.10 feet to a point; thence, South 89 Degrees 52 Minutes 20 Seconds West a distance of 237.15 feet to a point; thence North 00 Degrees 06 Minutes 01 Seconds West a distance of 207.03 feet to a point; thence, North 38 Degrees 42 Minutes 14 seconds West a distance of 238.71 feet to a point; thence, South 89 Degrees 45 Minutes 04 Seconds West a distance of 386.72 feet to a point; thence North 00 Degrees 14 Minutes 56 Seconds West a distance of 220.28 feet to a point; thence, South 89 Degrees 45 Minutes 04 Seconds West a distance of 40.50 feet to a point; thence, North 00 Degrees 14 Minutes 56 Seconds West a distance of 36.24 feet to a point of curvature; thence northwestwardly along a curve to the left having a radius of 75.00 feet, arc length 35.65 feet, delta angle 27 Degrees 13 Minutes 58 Seconds, Chord North 13 Degrees 51 Minutes 55 Seconds West 35.31 feet to a point in the south line of Goodman Road; thence, South 89 Degrees 11 Minutes 13 Seconds East with the south line of Goodman Road a distance of 326.99 feet to an angle point; thence North 86 Degrees 28 Minutes 25 Seconds East with the south line of Goodman Road a distance of 140.05 feet to an angle point; thence South 89 Degrees 22 Minutes 56 Seconds East with the south line of Goodman Road a distance of 80.00 feet to an angle point; thence South 65 Degrees 49 Minutes 11 Seconds East with the south line of Goodman Road a distance of 302.10 feet the point of beginning and containing 7.28 acres more or less of land.

Exhibit "A" - Part 3

"Tract 2"

Property description of part of Snowden Farms Commercial PUD, being part of the Bob White Land, LLC, Bob White Farm, LLC, RTA Properties, LLC, THT, III Properties, LLC, BST Properties, LLC and RCT Properties, LLC property as described in Book 569 Page 754 (Parcel V) and being in the Northeast Quarter of Section 33, Township 1 South, Range 7 West in the City of Southaven, Desoto County, Mississippi:-

Commencing at the recognized and accepted Northeast corner of Section 33, Township 1 South, Range 7 West in the City of Southaven, Desoto County, Mississippi, said point being the intersection of the centerlines of Goodman Road (Mississippi Highway 302) and Getwell Road; thence North 89 Degrees 22 Minutes 56 Seconds West with the centerline of Goodman Road a distance of 381.27 feet to a point; thence South 00 Degrees 37 Minutes 04 Seconds West a distance of 75.00 feet to a point in the south line of Goodman Road (right-of-way varies) said point being the true point of beginning; thence South 00 Degrees 14 Minutes 56 Seconds East a distance of 135.94 feet to an iron pin set at a point of curvature; thence southeastwardly along a curve to the left having a radius of 216.00 feet a distance of 338.84 feet (chord = South 45 Degrees 11 Minutes 18 Seconds East 305.15 feet, Delta = 89 Degrees 52 Minutes 44 Seconds) to a point; thence North 89 Degrees 52 Minutes 20 Seconds East a distance of 105.93 feet to a point in the west line of Getwell Road; thence North 00 Degrees 07 Minutes 40 Seconds West a distance of 226.52 feet to a point in the south line of Goodman Road; thence North 65 Degrees 49 Minutes 11 Seconds West with the south line of Goodman Road a distance of 302.10 feet to a point at an angle point in the south line of Goodman Road; thence North 89 Degrees 22 Minutes 56 Seconds West a distance of 46.90 feet to the point beginning and containing 1.97 acres.

Exhibit "B"

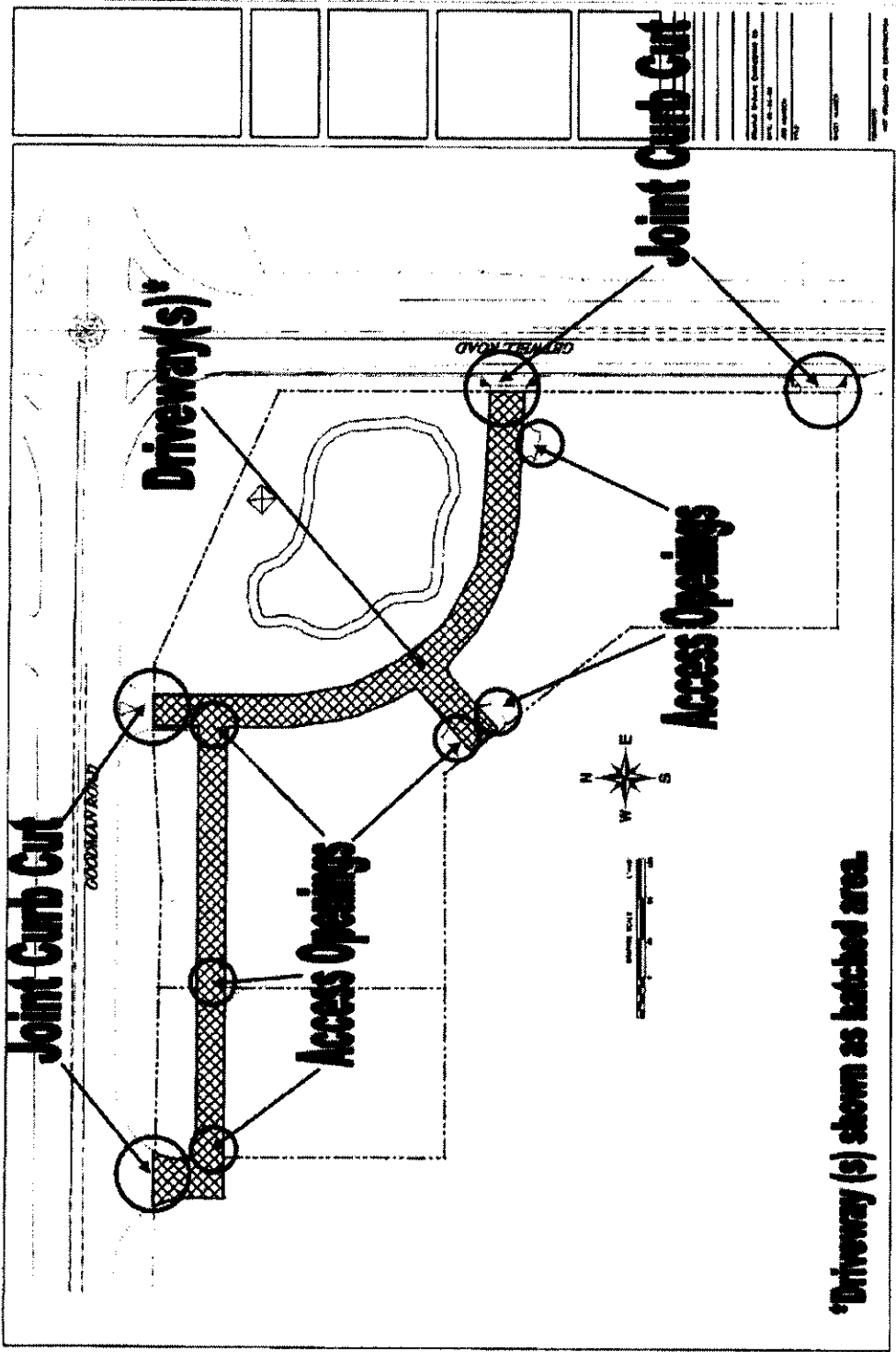


Exhibit "C"

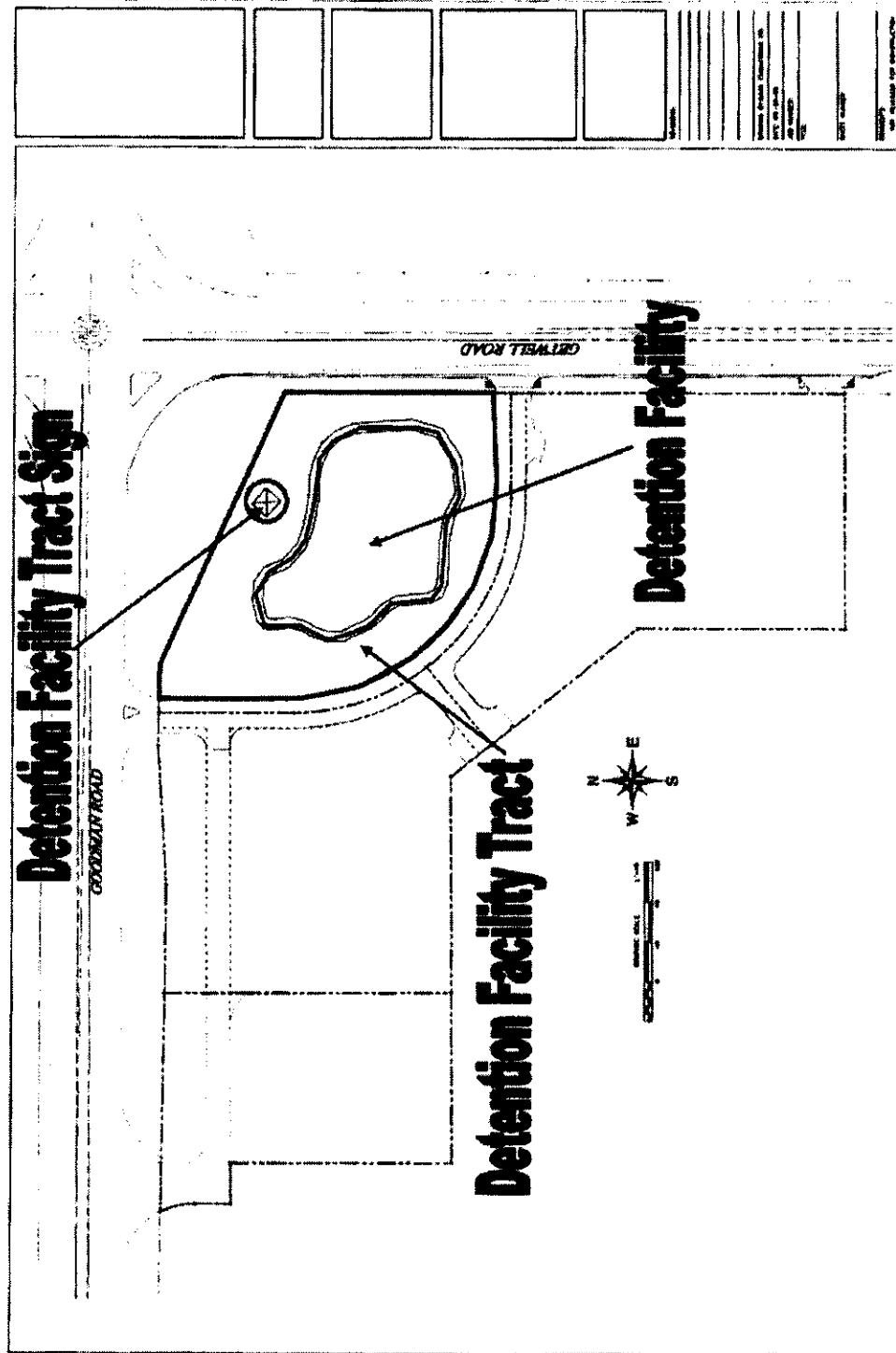


Exhibit "D" - Part 1

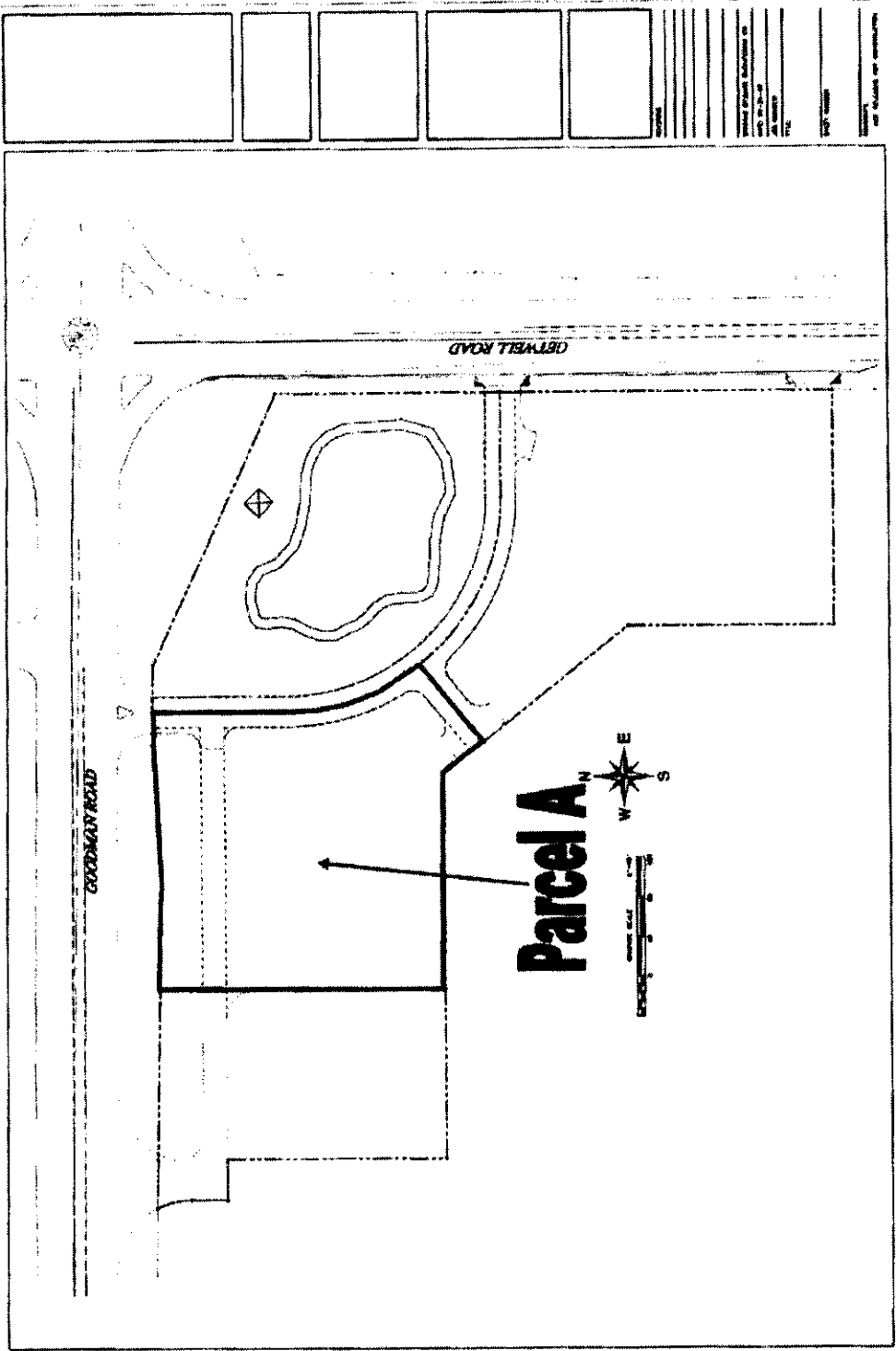


Exhibit "D" - Part 2

"Tract 1"

Property description of part of Snowden Farms Commercial PUD, being part of the Bob White Land, LLC, Bob White Farm, LLC, RTA Properties, LLC, THT, III Properties, LLC, BST Properties, LLC and RCT Properties, LLC property as described in Book 569 Page 754 (Parcel V) and being in the Northeast Quarter of Section 33, Township 1 South, Range 7 West in the City of Southaven, Desoto County, Mississippi:-

Commencing at the recognized and accepted Northeast corner of Section 33, Township 1 South, Range 7 West in the City of Southaven, Desoto County, Mississippi, said point being the intersection of the centerlines of Goodman Road (Mississippi Highway 302) and Getwell Road; thence North 89 Degrees 22 Minutes 56 Seconds West with the centerline of Goodman Road a distance of 381.27 feet to a point; thence South 00 Degrees 37 Minutes 04 Seconds West a distance of 75.00 feet to a point in the south line of Goodman Road (right-of-way varies) said point being the true point of beginning; thence South 00 Degrees 14 Minutes 56 Seconds East a distance of 135.94 feet to a point of curvature; thence southeastwardly along a curve to the left having a radius of 216.00 feet a distance of 142.82 feet (chord = South 19 Degrees 11 Minutes 28 Seconds East 140.23 feet, Delta = 37 Degrees 53 Minutes 05 Seconds) to a point; thence South 50 Degrees 06 Minutes 47 Seconds West a distance of 100.77 feet to a point; thence North 38 Degrees 42 Minutes 14 Seconds West a distance of 51.82 feet to a point; thence South 89 Degrees 45 Minutes 04 Seconds West a distance of 216.72 feet to a point; thence North 00 Degrees 14 Minutes 56 Seconds West a distance of 286.78 feet to a point in the south line of Goodman Road; thence easterly along the south line of Goodman Road the following three calls:-

South 89 Degrees 11 Minutes 13 Seconds East a distance of 108.14 feet to a point; thence North 86 Degrees 28 Minutes 25 Seconds East a distance of 140.05 feet to a point; thence South 89 Degrees 22 Minutes 56 Seconds East a distance of 33.10 feet to the point of beginning and containing 1.96 acres.

EXHIBIT "E"

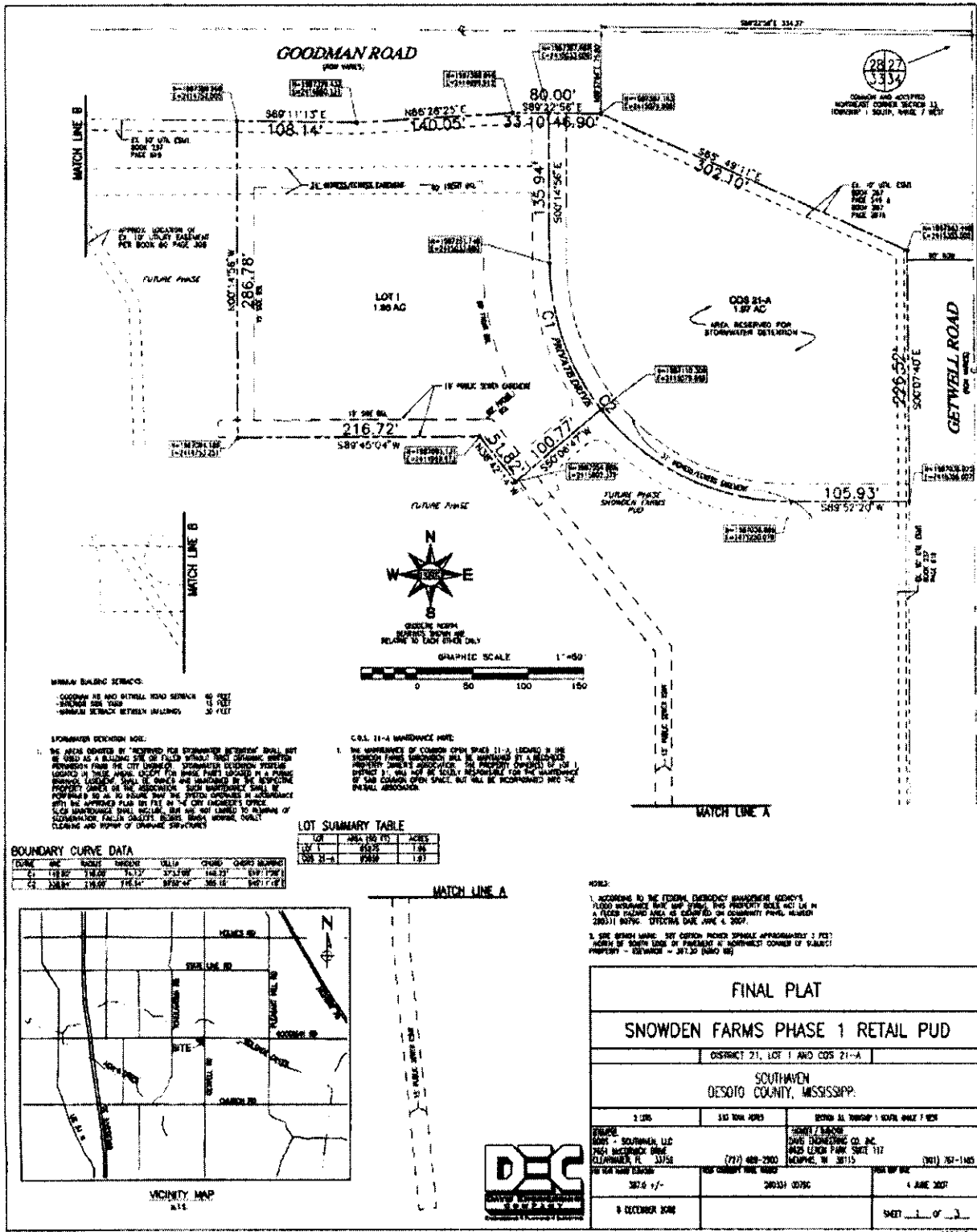


EXHIBIT "E" CONTINUED

OWNER'S CERTIFICATE

WE, THE UNDERSIGNED OWNERS OR AUTHORIZED REPRESENTATIVES OF THE OWNER OF THE PROPERTY, HEREBY ADOPT THIS AS OUR PLAN OF SUBDIVISION AND DEDICATE THE RIGHT-OF-WAY FOR THE USE OF ROADS AND UTILITY EASEMENTS AS SHOWN ON THE PLAN OF SUBDIVISION TO THE CITY OF SOUTHAVEN, MISSISSIPPI, FOR THE PUBLIC USE FOREVER.

NTA PROPERTIES, LLC

BY: _____
PRINT NAME
TITLE
DATE

NOTARY'S CERTIFICATE

STATE OF _____ COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED AUTHORITY IN AND FOR THE SAID COUNTY AND STATE, ON THIS ____ DAY OF ____, 20____ WITHIN MY JURISDICTION, THE WITHIN NAMED _____ WHO ACKNOWLEDGED THAT HE (SHE) IS _____ AND THAT FOR AND ON BEHALF OF THE SAID _____ AND AS ITS ACT AND DEED, HE (SHE) EXECUTED THE ABOVE AND FOREGOING WARRANTIES DEED FOR THE PURPOSES MENTIONED ON THE DAY AND YEAR HEREIN MENTIONED AFTER FIRST HAVING BEEN DULY AUTHORIZED BY SAID _____ SO TO DO.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC

OWNER'S CERTIFICATE (CONTINUED)

BOB WHITE FARMS, LLC

BY: _____
PRINT NAME
TITLE
DATE

NOTARY'S CERTIFICATE

STATE OF _____ COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED AUTHORITY IN AND FOR THE SAID COUNTY AND STATE, ON THIS ____ DAY OF ____, 20____ WITHIN MY JURISDICTION, THE WITHIN NAMED _____ WHO ACKNOWLEDGED THAT HE (SHE) IS _____ AND THAT FOR AND ON BEHALF OF THE SAID _____ AND AS ITS ACT AND DEED, HE (SHE) EXECUTED THE ABOVE AND FOREGOING WARRANTIES DEED FOR THE PURPOSES MENTIONED ON THE DAY AND YEAR HEREIN MENTIONED AFTER FIRST HAVING BEEN DULY AUTHORIZED BY SAID _____ SO TO DO.

MY COMMISSION EXPIRES: _____

NOTARY PUBLIC

CITY OF SOUTHAVEN CERTIFICATE

SOUTHAVEN PLANNING COMMISSION

APPROVED BY THE CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI PLANNING COMMISSION ON THIS THE ____ DAY OF ____, 20____

SECRETARY _____ CHAIRPERSON _____

SOUTHAVEN MAYOR & BOARD OF ALDERMEN

APPROVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI, ON THIS THE ____ DAY OF ____, 20____

CITY CLERK OF SOUTHAVEN _____ MAYOR OF SOUTHAVEN _____

STATE OF MISSISSIPPI

COUNTY OF DESOTO

I HEREBY CERTIFY THAT THE SUBDIVISION PLAT SHOWN HEREON WAS FILED FOR RECORD IN MY OFFICE AT _____ O'CLOCK _____ P.M. ON THE ____ DAY OF ____, 20____ AND WAS IMMEDIATELY ENTERED UPON THE PROPER INDEXES AND FULLY RECORDED IN PLAT BOOK _____ PAGE _____

CLERK OF COURT CLERK

CERTIFICATE OF ENGINEER

THIS IS TO CERTIFY THAT I HAVE DRAWN THIS SUBDIVISION SHOWN HEREON AND THE PLAT OF SAME IS ACCURATELY DRAWN FROM THE INFORMATION FROM A GROUND SURVEY BY ME.

PROFESSIONAL ENGINEER _____

CERTIFICATE OF SURVEYOR

THIS IS TO CERTIFY THAT I HAVE DRAWN THIS SUBDIVISION SHOWN HEREON AND THE PLAT OF SAME IS ACCURATELY DRAWN FROM THE INFORMATION FROM A GROUND SURVEY BY ME.

REGISTERED LAND SURVEYOR _____

FINAL PLAT			
SNOWDEN FARMS PHASE 1 RETAIL PUD			
DISTRICT 21, LOT 1 AND COS 21-A			
SOUTHAVEN DESOTO COUNTY, MISSISSIPPI			
1 UNIT	3.61 ACRES	SECTION 34, TOWNSHIP 1 NORTH, RANGE 1 WEST	
PREPARED BY: BOB WHITE FARMS, LLC PO BOX 1000 COLUMBIANA, MS 38928	DRAWN BY: DAVE ENGINEERING CO. INC. 1000 LEWIS PARK, SUITE 111 MEMPHIS, TN 38115	(728) 686-2500	(901) 267-1118
NO NEW ROAD REQUIRED	NEW CEMENT PAVED DRIVE	NO IMP SVCS	
NO B / -	200311 00170E	4 JUNE 2007	
6 DECEMBER 2008		SHEET 3 OF 4	